

## Expert witness testimony in regulatory cases

**D**uring a recent presentation about the Arizona Board of Technical Registration's enforcement program, I discussed the board's use of volunteer registrants to evaluate the technical knowledge and skill used, or not used, in particular investigations and disciplinary cases. I received several interesting questions and comments from the audience, specifically, that our volunteer registrant opinions would not carry as much weight in court as a "professional" (i.e., paid) expert witness testimony. I respectfully disagreed with those comments.

The law presumes that board members who are licensed engineers or surveyors possess the necessary knowledge, skills, and experience to evaluate the evidence in a disciplinary case without the aid (and added expense) of a "professional" expert witness. In fact, in Arizona, at smaller health regulatory boards that do not have the budgets to hire investigators, board members perform all the investigations themselves and issue all the disciplinary orders. Those orders have withstood judicial scrutiny in Arizona courts. [See *Golob v. Arizona Medical Board*, 217 Ariz. 505, 512, 176 P.3d 703, 710 (App.2008).]

Arguably, board members are appointed to regulatory boards because they possess the requisite specialized knowledge and technical competence to perform the duties required.

[See *Gaveck v. Arizona State Board of Podiatry Examiners*, 222 Ariz. 433, 437, 215 P.3d 1114, 1118 (App.2009).] Boards do not have to hire outside expert witnesses to assess the technical knowledge and skill required of professionals in their jurisdictions.

States may have specific statutes that establish the required technical knowledge and skill to withstand the burden of proof in civil law suits. Those standards may and probably do differ from the standards regulatory boards establish for minimum competence to practice. But the burden of proof should be distinguished from the capability and qualifications of the professional registrant providing testimony in a disciplinary case before a regulatory board or in a civil law suit.

Board members and registrants who provide expert opinions regarding the technical knowledge and skill of a respondent before a regulatory board possess legally sufficient expertise to offer opinions against a respondent that violated the practice act. It's this writer's opinion that regulatory boards do not need to hire experts to testify about the standard of technical knowledge and skill. Board members' opinions are expert enough to withstand appellate scrutiny.

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